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TASER INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOREEN SALINAS,)	Case No.: C 08-02625 RS
)	
Plaintiffs,)	[Richard Seeborg, United States
)	Magistrate Judge]
vs.)	
)	
CITY OF SAN JOSE, CHIEF ROBERT)	ANSWER OF DEFENDANT
DAVIS, TASER INTERNATIONAL, INC.)	TASER INTERNATIONAL,
and DOES 1 to 10 inclusive,)	INC. TO COMPLAINT;
)	DEMAND FOR JURY TRIAL
Defendants.)	

COMES NOW, Defendant TASER International, Inc. ("TASER" or "Defendant"),
for itself and for no other party, admits, denies and alleges as follows:

1. Answering paragraphs 1 and 2, these are jurisdictional and venue
allegations, and Defendant does not have sufficient information or belief to enable
Defendant to answer said paragraphs, and on those grounds denies generally and
specifically each and every allegation contained therein.

2. Answering paragraphs 3, 4, and 5, Defendant does not have sufficient
information or belief to enable Defendant to answer said paragraphs, and on those
grounds denies generally and specifically each and every allegation contained therein.

3. Answering paragraph 6, Defendant denies generally and specifically each

1 and every allegation contained therein.

2 4. Answering paragraph 7, Defendant does not have sufficient information or
3 belief to enable Defendant to answer said paragraph, and on those grounds denies
4 generally and specifically each and every allegation contained therein.

5 5. Answering paragraph 8, Defendant denies that it or its agents ratified all
6 of the acts complained of in the Complaint. As to the remainder of the allegations
7 therein, Defendant does not have sufficient information or belief to enable Defendant
8 to answer such allegations, and on those grounds denies generally and specifically each
9 and every allegation contained therein.

10 6. Answering paragraphs 9, 10, 11, and 12, Defendant does not have sufficient
11 information or belief to enable Defendant to answer said paragraphs, and on those
12 grounds denies generally and specifically each and every allegation contained therein.

13 7. Answering paragraphs 13 and 14, Defendant denies generally and
14 specifically each and every allegation contained therein.

15 8. Answering paragraph 15, Defendant denies that it was acting with the
16 implied or actual permission and consent of the Defendant City of San Jose. As to the
17 remainder of the allegations therein, Defendant does not have sufficient information or
18 belief to enable Defendant to answer such allegations, and on those grounds denies
19 generally and specifically each and every allegation contained therein.

20 9. Answering paragraph 16, Defendant does not have sufficient information
21 or belief to enable Defendant to answer said paragraph, and on those grounds denies
22 generally and specifically each and every allegation contained therein and denies
23 liability.

24 10. Answering paragraph 17, Defendant does not have sufficient information
25 or belief to enable Defendant to answer said paragraph, and on those grounds denies
26 generally and specifically each and every allegation contained therein.

27 11. Answering paragraphs 18 and 19, Defendant does not have sufficient
28 information or belief to enable Defendant to answer said paragraphs, and on those

1 grounds denies generally and specifically each and every allegation contained therein.

2 12. Answering paragraphs 20, 21, 22 and 23, Defendant denies that exposure
3 to a TASER device caused decedent's injuries or death. As to the remainder of the
4 allegations therein, Defendant does not have sufficient information or belief to enable
5 Defendant to answer such allegations, and on those grounds denies generally and
6 specifically each and every allegation contained therein.

7 13. Answering paragraph 24, which incorporates by reference the allegations
8 of other paragraphs of the pleading, Defendant to the same extent incorporates by
9 reference the answers provided herein to those paragraphs.

10 14. Answering paragraphs 25, 26, 27, 28 and 29, Defendant denies that a
11 TASER device caused decedent's death; as to the remainder of the allegations therein,
12 no factual allegations are made as to this Defendant; therefore, Defendant does not have
13 sufficient information or belief to enable Defendant to answer said paragraphs, and on
14 those grounds denies generally and specifically each and every allegation contained
15 therein. If the factual allegations are made so as to apply to Defendant, then Defendant
16 denies generally and specifically each and every allegation contained therein.

17 15. Answering paragraph 30, which incorporates by reference the allegations
18 of other paragraphs of the pleading, Defendant to the same extent incorporates by
19 reference the answers provided herein to those paragraphs.

20 16. Answering paragraphs 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,
21 45, and 46, Defendant denies that a TASER device caused decedent's death; as to the
22 remainder of the allegations therein, no factual allegations are made as to this
23 Defendant; therefore, Defendant does not have sufficient information or belief to enable
24 Defendant to answer said paragraphs, and on those grounds denies generally and
25 specifically each and every allegation contained therein. If the factual allegations are
26 made so as to apply to Defendant, then Defendant denies generally and specifically each
27 and every allegation contained therein.

28 17. Answering paragraph 47, which incorporates by reference the allegations

1 of other paragraphs of the pleading, Defendant to the same extent incorporates by
2 reference the answers provided herein to those paragraphs.

3 18. Answering paragraphs 48, 49, 50, 51, 52, 53, 54, and 55, Defendant denies
4 that a TASER device caused decedent's death; as to the remainder of the allegations
5 therein, no factual allegations are made as to this Defendant; therefore, Defendant does
6 not have sufficient information or belief to enable Defendant to answer said paragraphs,
7 and on those grounds denies generally and specifically each and every allegation
8 contained therein. If the factual allegations are made so as to apply to Defendant, then
9 Defendant denies generally and specifically each and every allegation contained therein.

10 19. Answering paragraph 56, which incorporates by reference the allegations
11 of other paragraphs of the pleading, Defendant to the same extent incorporates by
12 reference the answers provided herein to those paragraphs.

13 20. Answering paragraphs 57 and 58, Defendant denies generally and
14 specifically each and every allegation contained therein.

15 21. Answering paragraph 59, which incorporates by reference the allegations
16 of other paragraphs of the pleading, Defendant to the same extent incorporates by
17 reference the answers provided herein to those paragraphs.

18 22. Answering paragraph 60, Defendant does not have sufficient information
19 or belief to enable Defendant to answer said paragraph, and on those grounds denies
20 generally and specifically each and every allegation contained therein.

21 23. Answering paragraph 61, Defendant denies generally and specifically each
22 and every allegation contained therein.

23 24. Answering paragraph 62, which incorporates by reference the allegations
24 of other paragraphs of the pleading, Defendant to the same extent incorporates by
25 reference the answers provided herein to those paragraphs.

26 25. Answering paragraphs 63, 64, 65, 66, and 67, Defendant denies that a
27 TASER device caused decedent's death; as to the remainder of the allegations therein,
28 no factual allegations are made as to this Defendant; therefore, Defendant does not have

1 sufficient information or belief to enable Defendant to answer said paragraphs, and on
2 those grounds denies generally and specifically each and every allegation contained
3 therein. If the factual allegations are made so as to apply to Defendant, then Defendant
4 denies generally and specifically each and every allegation contained therein.

5 26. Answering paragraph 68, which incorporates by reference the allegations
6 of other paragraphs of the pleading, Defendant to the same extent incorporates by
7 reference the answers provided herein to those paragraphs.

8 27. Answering paragraphs 69, 70, 71, and 72, Defendant denies that a TASER
9 device caused decedent's death; as to the remainder of the allegations therein, no factual
10 allegations are made as to this Defendant; therefore, Defendant does not have sufficient
11 information or belief to enable Defendant to answer said paragraphs, and on those
12 grounds denies generally and specifically each and every allegation contained therein.
13 If the factual allegations are made so as to apply to Defendant, then Defendant denies
14 generally and specifically each and every allegation contained therein.

15 28. Answering paragraph 73, which incorporates by reference the allegations
16 of other paragraphs of the pleading, Defendant to the same extent incorporates by
17 reference the answers provided herein to those paragraphs.

18 29. Answering paragraphs 74 and 75, Defendant denies generally and
19 specifically each and every allegation contained therein.

20 30. Answering paragraph 76, which incorporates by reference the allegations
21 of other paragraphs of the pleading, Defendant to the same extent incorporates by
22 reference the answers provided herein to those paragraphs.

23 31. Answering paragraphs 77, 78, 79, 80, 81, 82 and 83, Defendant denies that
24 a TASER device caused decedent's death; as to the remainder of the allegations therein,
25 no factual allegations are made as to this Defendant; therefore, Defendant does not have
26 sufficient information or belief to enable Defendant to answer said paragraphs, and on
27 those grounds denies generally and specifically each and every allegation contained
28 therein. If the factual allegations are made so as to apply to Defendant, then Defendant

1 denies generally and specifically each and every allegation contained therein.

2 32. Answering paragraph 84, which incorporates by reference the allegations
3 of other paragraphs of the pleading, Defendant to the same extent incorporates by
4 reference the answers provided herein to those paragraphs.

5 33. Answering paragraph 85, Defendant admits the allegations contained
6 therein.

7 34. Answering paragraphs 86, 87, 88, 89, 90, 91 and 92, Defendant denies
8 generally and specifically each and every allegation contained therein.

9 35. Defendant denies each and every allegation in Plaintiff's Complaint not
10 specifically admitted herein.

11 FIRST AFFIRMATIVE DEFENSE

12 36. Answering said Complaint on file herein, and the whole thereof, including
13 each and every purported claim contained therein, this answering defendant denies that
14 plaintiff sustained any injury, damage, or loss, if any, by reason of any act or omission
15 on the part of this answering defendant, or any agent, servant, or employee of this
16 answering defendant.

17 SECOND AFFIRMATIVE DEFENSE

18 37. This answering defendant specifically denies that any negligence on its part
19 contributed to or was a legal cause of any injuries sustained by plaintiff. But, in the
20 event it is found that this answering defendant is negligent in any manner or to any
21 degree, certain co-defendants may be negligent to a certain degree for the injuries or
22 damages sustained by plaintiff, and there may be persons or parties not named to this
23 action, including plaintiff, who likewise may have contributed in whole or in part to the
24 injuries alleged to have been sustained by plaintiff; whereby, this answering defendant
25 contends that in the event there is found to be fault on the part of this answering
26 defendant, which in any manner or degree contributed to the injuries of the plaintiff, that
27 a finding should be made apportioning and fixing the comparative fault of any of all
28 parties or persons whether named to this action or otherwise.

THIRD AFFIRMATIVE DEFENSE

38. Plaintiff's Complaint fails to state facts sufficient to constitute any claim against this answering defendant.

FOURTH AFFIRMATIVE DEFENSE

39. The liability, if any, of this answering defendant is further limited by the provisions by Proposition No. 51, as set forth in the California Civil Code, Sections 1431 et seq. This answering defendant's liability for non-economic damages, if any, is limited to that percentage of those damages which are in direct proportion to defendant's percentage of fault in accordance with Civil Code Section 1431.2(a).

FIFTH AFFIRMATIVE DEFENSE

40. Plaintiff has failed to mitigate the damages, if any, which were sustained, and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other things, plaintiff failed to use reasonable diligence in caring for any injuries, failed to use reasonable means to prevent aggravation of any injuries and failed to take reasonable precautions to reduce any injuries and damages.

SIXTH AFFIRMATIVE DEFENSE

41. To the extent that plaintiff suffered any detriment, such detriment was unavoidable. The damages sustained by plaintiff, if any, were the result of an unavoidable accident insofar as defendant is concerned, and occurred without any negligence, want of care, default, or other breach of duty to plaintiff on the part of defendant.

SEVENTH AFFIRMATIVE DEFENSE

42. Any damages suffered by plaintiff were not proximately or legally caused by, or resulting from, the conduct of this answering defendant.

EIGHTH AFFIRMATIVE DEFENSE

43. At the time and place referred to in the Complaint, and before such event, plaintiff knew the risk involved in placing himself in the position which plaintiff then assumed such risk, including, but not limited to, the risk of suffering serious bodily

1 injury or death.

2 NINTH AFFIRMATIVE DEFENSE

3 44. The injuries, losses, and/or damages complained of by plaintiff, resulted
4 from a superseding, intervening act of another person(s), or event, whether named herein
5 or not, which was the direct and proximate cause of any such damages, losses, and/or
6 injuries, if any, complained of by plaintiff. This defendant had no control over the
7 actions taken by law enforcement towards plaintiff, and any alleged injuries suffered by
8 plaintiff arise directly out of independent conduct not controlled by this defendant, i.e.,
9 the conduct engaged in by plaintiff, and the actions taken by law enforcement. By reason
10 of such intervening acts or events, this answering defendant's liability, if any, is limited
11 or otherwise barred.

12 TENTH AFFIRMATIVE DEFENSE

13 45. Recovery against defendant is barred to the extent anyone failed to use the
14 allegedly defective product in its intended manner, or in a reasonable manner.

15 ELEVENTH AFFIRMATIVE DEFENSE

16 46. The benefits of the challenged design of the products alleged in the
17 Complaint outweigh any inherent risk of danger in said products.

18 TWELFTH AFFIRMATIVE DEFENSE

19 47. This answering defendant did not have, at all times relevant to the
20 Complaint, actual or constructive knowledge of the alleged danger, or risk inherent in
21 the use of the products as alleged in the Complaint.

22 THIRTEENTH AFFIRMATIVE DEFENSE

23 48. This answering defendant did not breach any express or implied warranties
24 or make any negligent misrepresentations as alleged in the Complaint.

25 FOURTEENTH AFFIRMATIVE DEFENSE

26 49. The products alleged in the Complaint were not defective in design,
27 manufacture or distribution, and plaintiff's Complaint is therefore barred.

28 ///

FIFTEENTH AFFIRMATIVE DEFENSE

50. Any warning or instructions given by this answering defendant was adequate to avoid injury to person(s) or property from any inherent dangers of the products alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

51. Any purported defect in the products alleged in the Complaint were caused by alteration, in and/or modification of the product after its purchase. If any individual suffered or sustained any loss, injury, or detriment, the same was directly and proximately caused and contributed to by the abuse, misuse, substantial change and/or alteration of the product manufactured by this answering defendant following its manufacture and/or sale, thereby barring or diminishing plaintiff's recovery herein.

SEVENTEENTH AFFIRMATIVE DEFENSE

52. Any purported defect in the products alleged in the Complaint resulted from misuse of the product by third parties.

EIGHTEENTH AFFIRMATIVE DEFENSE

53. Any purported defect in the products alleged in the Complaint was not the proximate nor legal cause of plaintiff's damages, if any.

NINETEENTH AFFIRMATIVE DEFENSE

54. This answering defendant did not make any warranty concerning the products as alleged in the Complaint, on which plaintiff reasonably relied.

TWENTIETH AFFIRMATIVE DEFENSE

55. A warning by defendant could not have been effective in lessening plaintiff's risk of personal injury.

TWENTY-FIRST AFFIRMATIVE DEFENSE

56. The alleged injury did not result from a use of the product which was reasonably foreseeable by this answering defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

57. To the extent the product was being used in a reasonable manner

1 appropriate to the purpose for which it was intended, recovery against the defendant is
2 barred.

3 TWENTY-THIRD AFFIRMATIVE DEFENSE

4 58. The product by which plaintiff alleges he was injured was designed in
5 accordance with the existing state of the art. Misuse of the product if any, was without
6 defendant's knowledge, approval, or consent and was contrary to the printed instructions
7 that were delivered with the product. Any such use of the product was not reasonably
8 foreseeable to defendant either at or before the time of the sale, or at any time before the
9 time defendant received notice of the accident described in the Complaint.

10 TWENTY-FOURTH AFFIRMATIVE DEFENSE

11 59. There was no defect in the product at the time that it left the possession of
12 defendant.

13 TWENTY-FIFTH AFFIRMATIVE DEFENSE

14 60. Defendant expressly disclaimed any implied warranties by using language
15 which in common understanding called attention to the exclusion of warranties and
16 made plain that there was no implied warranty

17 TWENTY-SIXTH AFFIRMATIVE DEFENSE

18 61. Negligence on the part of plaintiff or others was a proximate cause of the
19 plaintiff's injury.

20 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

21 62. There was no obligation on defendant to warn in that the alleged dangerous
22 propensity was obvious and or known at the time the product was being used.

23 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

24 63. The alleged risk was neither known nor scientifically knowable at the time
25 of the manufacture or distribution of the subject product.

26 TWENTY-NINTH AFFIRMATIVE DEFENSE

27 64. If plaintiff has a claim for negligence, such claim is barred or plaintiff's
28 recovery should be diminished because the alleged damage was caused by the plaintiff,

1 or others' failure to exercise ordinary care on their own behalf for their own safety. That
2 negligence caused the injury and damage, if any, that plaintiff sustained. Consequently,
3 plaintiff's right to recover should be diminished by the plaintiff's and other's
4 proportional share of fault.

5 THIRTIETH AFFIRMATIVE DEFENSE

6 65. If plaintiff has a claim for negligence, such claim is barred or recovery
7 should be reduced because any injuries or damages were proximately caused by the
8 negligence and other legal fault of persons or entities other than this answering
9 defendant.

10 THIRTY-FIRST AFFIRMATIVE DEFENSE

11 66. The damages sustained, if any, were proximately caused by the acts,
12 omissions, negligence, fraud and/or breach of obligations by persons other than this
13 answering defendant, and beyond defendant's supervision and control.

14 THIRTY-SECOND AFFIRMATIVE DEFENSE

15 67. This answering defendant is not legally responsible for the acts and/or
16 omissions of those defendants named as Does.

17 THIRTY-THIRD AFFIRMATIVE DEFENSE

18 68. If plaintiff suffered or sustained any loss, injury, damage or detriment, the
19 same was directly and proximately caused and contributed to by the strict liability,
20 breach of warranty, conduct, acts, omissions, activities, carelessness, recklessness,
21 negligence, and/or intentional misconduct of plaintiff, or others, thereby completely or
22 partially barring plaintiff's recovery herein.

23 THIRTY-FOURTH AFFIRMATIVE DEFENSE

24 69. If any individual herein suffered or sustained any loss, injury, damage, or
25 detriment as a result of exposure to any product constructed for or on behalf of this
26 answering defendant, no liability should attach to this answering defendant in that the
27 state of the engineering and/or construction knowledge, and/or the published literature
28 and other materials reflected in such state of the engineering and/or construction

1 knowledge at all times pertinent hereto, were such that this answering defendant neither
2 knew nor could have reasonably known that its product or work presented any
3 foreseeable risk of harm to third persons in the normal expected use of said work,
4 thereby barring or diminishing plaintiff's recovery herein.

5 THIRTY-FIFTH AFFIRMATIVE DEFENSE

6 70. Any alleged injuries, to the extent they are found to be wholly or partially
7 attributable to the product or products of defendant, which is expressly denied by the
8 defendant, were the direct and proximate result of an idiosyncratic reaction which was
9 not reasonably foreseeable by defendant, and which was not the result of any conduct
10 or negligence on the part of defendant, nor the result of any defect in any product
11 manufactured or distributed by defendant.

12 THIRTY-SIXTH AFFIRMATIVE DEFENSE

13 71. The contributory and/or comparative negligence of plaintiff was a
14 proximate cause in bringing about injury. The plaintiff's recovery against defendant
15 should be reduced in proportion to the amount of negligence attributable to the plaintiff.

16 THIRTY-SEVENTH AFFIRMATIVE DEFENSE

17 72. This defendant did not engage in any conduct warranting the recovery of
18 punitive damages by the Estate of the decedent; and the heirs of decedent are not legally
19 entitled to recover punitive damages.

20 THIRTY-EIGHTH AFFIRMATIVE DEFENSE

21 73. The plaintiff's recovery is barred because any injury or damage suffered by
22 plaintiff was caused solely by reason of the plaintiff's wrongful acts and conduct and the
23 willful resistance to a peace officer in the discharge their duties.

24 THIRTY-NINTH AFFIRMATIVE DEFENSE

25 74. The plaintiffs' recovery is barred because TASER did not owe a duty to any
26 plaintiff.

27 FORTIETH AFFIRMATIVE DEFENSE

28 75. The use of Defendant's product, if any, was by sophisticated users to whom

1 Defendant was not required to provide warnings of the risks of injury as alleged in the
2 Complaint.

3 FORTY-FIRST AFFIRMATIVE DEFENSE

4 76. Plaintiffs' claims against TASER are barred by the applicable statute of
5 limitations.

6
7 FORTY-SECOND AFFIRMATIVE DEFENSE

8 77. Plaintiffs fail to state any claim against TASER.

9
10 RESERVATION OF ADDITIONAL DEFENSES

11 78. Defendant reserves the right to plead as additional affirmative defenses, and
12 any other matters constituting an avoidance or affirmative defense as the same may be
13 revealed during disclosure and/or discovery proceedings in this matter.

14 WHEREFORE, Defendant TASER INTERNATIONAL, INC. prays that plaintiffs
15 take nothing by this action and that Defendant TASER INTERNATIONAL, INC. be
16 awarded costs and all other just relief.

17 Dated: September 3, 2008

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

19
20 By: /s/ Mildred K. O'Linn
21 Mildred K. O'Linn
22 Timothy J. Kral
23 Attorneys for Defendant,
24 TASER INTERNATIONAL, INC.
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DEMAND FOR JURY TRIAL

Defendant TASER INTERNATIONAL, INC. hereby demands trial of this matter
by jury.

Dated: September 3, 2008

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

By: /s/ Mildred K. O'Linn
Mildred K. O'Linn
Timothy J. Kral
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TASER INTERNATIONAL, INC.